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In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-848

UNITED STATES DEPARTMENT OF AGRICULTURE, ET AL., APPELLANTS

v.

LULA MAE MURRY, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE APPELLANTS

OPINION BELOW

The opinion of the three-judge district court (J.S. App. A) is reported at 348 F. Supp. 242.

JURISDICTION

The judgment of the three-judge district court (J.S. App. A) was entered on August 14, 1972. A notice of appeal to this Court (J.S. App. B) was filed on September 12, 1972. On November 2, 1972, the Chief Justice extended the time for docketing the appeal to and including December 11, 1972. The juris-

dictional statement was filed on December 8, 1972, and probable jurisdiction was noted on February 20, 1973. The jurisdiction of this Court rests on 28 U.S.C. 1252 and 1253.

QUESTION PRESENTED

Whether the provision of the Food Stamp Act excluding from participation in the food stamp program households containing adult dependents of a taxpayer who is not himself a member of an eligible household is constitutional.

STATUTES AND REGULATIONS INVOLVED

Section 5(b) of the Food Stamp Act of 1964, 7 U.S.C. 2014(b), as amended by Section 4, Pub. L. 91–671, 84 Stat. 2049, provides in pertinent part:

> The Secretary, in consultation with the Secretary of Health, Education and Welfare, shall establish uniform national standards of eligibility for participation by households in the food stamp program and no plan of operation submitted by a State agency shall be approved unless the standards of eligibility meet those established by the Secretary. The standards established by the Secretary, at a minimum, shall prescribe the amounts of household income and other financial resources, including both liquid and nonliquid assets, to be used as criteria of eligibility. Any household which includes a member who has reached his eighteenth birthday and who is claimed as a dependent child for Federal income tax purposes by a taxpayer who is not a member of an eligible

household, shall be ineligible to participate in any food stamp program established pursuant to this chapter during the tax period such dependency is claimed and for a period of one year after expiration of such tax period. * * *

7 C.F.R. 270.2(q) provides:

> "Dependent" for the purpose of § 271.3 (d) of this subchapter, means a person claimed as a dependent for Federal income tax purposes by a parent or guardian and living apart from the household of such parent or guardian.

7 C.F.R. 271.3(d) provides:

> Any household which includes a member who has reached his 18th birthday and who is claimed as a dependent for Federal income tax purposes by a member of a household which is not certified as being eligible for food assistance shall be ineligible to participate in the program during the tax period such dependency is claimed and for a period of 1 year after expiration of such tax period.

Section 151(e) of the Internal Revenue Code of 1954, 26 U.S.C. (Supp. I) 151(e), as amended by Section 201(b)(1), Pub. L. 92–178, 85 Stat. 510, provides in pertinent part:

> An exemption of $750 [shall be allowed] for each dependent (as defined in section 152)—
>
> (A) whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than $750, or
>
> (B) who is a child of the taxpayer and who (i) has not attained the age of 19 at the close

of the taxable year in which the taxable year of the taxpayer begins, or (ii) is a student. * * *

Section 152(a) of the Internal Revenue Code of 1954, 26 U.S.C. 152(a), provides in pertinent part:

> * * * the term "dependent" means any of the following individuals over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer * * *:
>
> [a] A son or daughter of the taxpayer * * *.

STATEMENT

Appellees, challenging the constitutionality of the 1971 amendment to Section 5(b) of the Food Stamp Act of 1964, brought this suit for declaratory and injunctive relief in the United States District Court for the District of Columbia. The 1971 amendment, added by Section 4 of Pub. L. 91-671, 84 Stat. 2049, declared ineligible for food stamps "[a]ny household which includes a member who has reached his eighteenth birthday and who is claimed as a dependent child for Federal income tax purposes by a taxpayer who is not a member of an eligible household";[1] the household is ineligible "during the tax

[1] A "dependent" under this section is defined by regulation as a "person claimed as a dependent for Federal income tax purposes by a parent or guardian and living apart from the household of such parent or guardian." 7 C.F.R. 270.2(q). Under the pertinent provisions of the Internal Revenue Code, a taxpayer may claim his child as a dependent, and thus obtain an exemption of $750, if the child receives "over half of [his] support" from the taxpayer. 26 U.S.C. 151(e) and 152(a). But a dependency exemption is not available for children over the age of 18 unless they are students or earn less than $750 during the taxable year. 26 U.S.C. 151(e).

period such dependency is claimed and for a period of one year after expiration of such tax period."[2] Appellees alleged that they were food stamp applicants who, although satisfying all other eligibility requirements of the Act, had been denied food stamps pursuant to the 1971 amendment because one or more members of their respective households, over the age of 17, had been claimed as a dependent child by a taxpayer who did not himself reside in a household eligible for food stamp assistance.[3]

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[2] Pursuant to the Court's order noting probable jurisdiction, this case will be heard together with No. 72-534, *United States Department of Agriculture* v. *Moreno*, which involves the constitutionality of another provision of the 1971 amendments. Our brief in *Moreno* describes (at 4-5) the basic operation of the food stamp program administered under the Act.

[3] The allegations of at least some of the appellees furnish an uncertain basis for the presentation of the constitutional issue. Appellee Murry claims that she was denied food stamps, at least in part, because her grandson was claimed as a dependent by his grandfather (Mot. to Aff. 3); but the 1971 amendment is concerned solely with dependency claims asserted by parents or guardians (and Murry does not allege that the grandfather is his grandson's guardian). See 7 C.F.R. 270.2(q). Appellees Valdez, Broderson, and Shultz allege facts which suggest that they were claimed as dependents on account of support which they received prior to establishing their present households (App. 54, 56, 58); as we read the statute, it is concerned only with dependency claims made with respect to a taxable year during which the dependent in fact resided in the household seeking food stamp assistance. Thus if those appellees were in fact denied food stamp assistance, that denial may have been erroneous; in any event, they have not established standing to challenge the constitutionality of the Act. Furthermore, all appellees other than Valdez, Broderson, and Schultz allege facts which strongly imply that the dependency claims resulting in their ineligibility for food stamps were invalid; these appellees state, expressly or implicitly, that the taxpayer making the

A three-judge district court was convened pursuant to 28 U.S.C. 2282 and 2284. Upon cross-motions for summary judgment, the court declared Section 5(b), as amended, to be invalid under the Due Process Clause of the Fifth Amendment and enjoined the government from denying food stamp assistance on the basis of the 1971 amendment.

SUMMARY OF ARGUMENT

The standard of review for the constitutionality of the statutory classification challenged by appellees is the "reasonable basis" test. *Jefferson* v. *Hackney,* 406 U.S. 535; *Richardson* v. *Belcher,* 404 U.S. 78; *Dandridge* v. *Williams,* 397 U.S. 471. The fact that the classification may indirectly affect appellees' choice of living arrangements does not make the higher "compelling governmental interest" standard applicable. *E.g., Eisenstadt* v. *Baird,* 405 U.S. 438.

This statutory classification has a reasonable basis. The provision disqualifies those households in which young adults have received significant financial support from a parent. By so restricting the availability of food stamps, Congress has eliminated a serious abuse and thereby reserved the expenditure of public welfare funds for the most needy.

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dependency claim provided less than the necessary one-half of the dependent's support (App. 29, 32, 34–35, 48, 50). As is discussed further below (note 6, *infra*), the statute can be read as excluding only those households with respect to which a valid dependency claim has been made, in which case all appellees would merely have been erroneously denied food stamp assistance and would therefore lack standing to challenge the constitutionality of the Act.

ARGUMENT

THE PROVISION OF THE FOOD STAMP ACT EXCLUDING HOUSEHOLDS CONTAINING ONE OR MORE ADULT DEPENDENTS OF A TAXPAYER WHO IS NOT HIMSELF A MEMBER OF AN ELIGIBLE HOUSEHOLD IS CONSTITUTIONAL

A. THIS WELFARE CLASSIFICATION MUST BE UPHELD IF IT HAS A REASONABLE BASIS

As we have shown in our brief in the companion case of *United States Department of Agriculture* v. *Moreno* (see note 2, *supra*), a welfare classification must be upheld if it furthers any reasonable purpose which may be attributed to the legislature (Br. 8–9, 11–12). And see *Jefferson* v. *Hackney*, 406 U.S. 535; *Richardson* v. *Belcher*, 404 U.S. 78; *Dandridge* v. *Williams*, 397 U.S. 471.[4]

Appellees contend (Mot. to Aff. 15–19) that the classification established by Section 5(b) of the Act,

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[4] Appellees, relying primarily on cases decided prior to *Bolling* v. *Sharpe*, 347 U.S. 497, contend (Mot. to Aff. 7–12) that by "creating * * * an irrebuttable and erroneous presumption" (Mot. to Aff. 8) the statute here at issue results in a denial of due process independently of any question concerning equal protection. But the fact that the classification rests upon certain legislative presumptions does not raise a separate issue of due process as such; the issue is simply whether the presumptions are reasonable, and analytically this is an issue of equal protection. By raising a question of due process, narrowly conceived, appellees apparently mean to claim the right to an evidentiary hearing to determine a fact not germane to eligibility under the Act, *i.e.*, whether despite the presence of tax dependents a household is still needy. Due process does not require a hearing with respect to issues unrelated to eligibility. See *Mills* v. *Richardson*, 464 F. 2d 995, 1001 (C.A. 2).

as amended, impinges upon their fundamental rights of privacy and association and therefore may be upheld only if it serves a compelling governmental interest. This claim is answered generally in our brief in *Moreno* (at 9–11), where we show that welfare classifications merely incidentally or tangentially affecting important rights are valid if they have a reasonable basis. And see *Eisenstadt* v. *Baird*, 405 U.S. 438, and *Dandridge* v. *Williams*, *supra*, invoking the "reasonable basis" test in cases involving classifications impinging upon privacy and associational rights. As in *Moreno*, the primary interest asserted here is that of receiving food stamps. Although that interest is significant to the appellees, it does not involve a fundamental right. *E.g.*, *Jefferson* v. *Hackney*, *supra*. The traditional minimal rationality standard for equal protection cases therefore applies here.

In the context of this case we further point out that appellees' arguments concerning privacy and associational rights are in fact addressed not so much to the particular classification involved here as to the fact that food stamp eligibility is determined on a household rather than an individual basis. The right appellees assert is the right to live with whomever they choose, without any adverse effect on their privilege of receiving food stamps; and the very determination of food stamp eligibility on a household basis impinges upon this "right," for it results in the denial of food stamps to low-income persons who

choose to live with persons with somewhat higher incomes.

Yet there are sound reasons of administration for aggregating the resources and expenses of all members of the household; the assessment of need can properly be made only by looking at the household as an entity. A provision excluding from eligibility a household which included a person with substantial non-income producing assets (*e.g.*, a valuable diamond necklace) would have a rational relationship to the purposes of the Act and therefore satisfy constitutional requirements of due process and equal protection, even though it seriously impinged upon the associational "right" appellees claim here. Similarly, as we will now show, the classification here in question also has a rational relationship to the purposes of the Act, for it excludes from eligibility only those households which include one or more persons who may be fairly presumed to receive or have available significant parental support.

B. THE EXCLUSION OF HOUSEHOLDS CONTAINING ONE OR MORE ADULT DEPENDENTS OF A TAXPAYER WHO IS NOT HIMSELF A MEMBER OF AN ELIGIBLE HOUSEHOLD HAS A REASONABLE BASIS

The apparent rationale of the 1971 amendment to Section 5(b) is as follows: (a) there was concern that many households, which received, or had available to them, outside support, abused the food stamp program by concealing that support or by electing to live off public resources (*i.e.*, food stamps) rather

than their available private resources;[8] (b) the major instances of such abuse were considered to be those cases where the outside support was sufficiently great to entitle the person providing the support to claim a dependency exemption; (c) such outside support was presumed, however, to be insubstantial or limited when it was provided by a person who was himself a member of a low-income household; (d) it was determined that absent parents should not be discouraged from providing support for their minor children; (e) therefore, eligibility was denied to households which include persons over 17 years of age who are claimed as dependents by a taxpayer residing in a household which is not itself eligible for food stamp assistance. In short, by amending Section 5(b) Congress was merely attempting to close a loophole which had led to abuse, and the classification fashioned by Congress was closely tailored to the elimination of that abuse.

The purpose of the food stamp program is to "raise levels of nutrition among low-income households." 7 U.S.C. 2011. The program was not intended to provide food for college students and other young adults at a time when they receive support from their parents or can look to their parents for financial assistance; it was not intended to substitute federal

[8] The legislative history of the amendment reflects a congressional concern about abuses of the program by "college students, children of wealthy parents." 116 Cong. Rec. 41979 (Congressman Latta). See also 116 Cong. Rec. 41981 (Congressman Poage); 116 Cong. Rec. 41993 (Congresswoman May); 116 Cong. Rec. 42021 (Congressman Belcher).

for parental support. Congress could, consistently with the basic purpose of the Act, legitimately terminate food stamp assistance to these young adults and their households. It was well within the discretion of Congress to restrict the expenditure of public funds for the benefit of only those households having no significant alternative source of support; it is not the function of the judiciary "to second-guess * * * officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients." *Dandridge* v. *Williams,* 397 U.S. 471, 487.

Furthermore, the means chosen by Congress were rationally related to its legitimate goal. A parent is entitled to claim his child as a dependent only if he provides over one-half of the child's support. Thus the amendment does not affect households whose members receive insignificant parental support. Furthermore, by disregarding dependency claims made by taxpayers who themselves live in low-income households, the statutes renders ineligible only those households which are in a position to obtain assistance from relatively affluent parents. Thus, the statute is tailored to exclude from eligibility only those households which include one or more young adults who may be fairly presumed to receive significant parental support.

Appellees state (Mot. to Aff. 19) that the 1971 amendment has deprived "thousands of needy households" of food stamp assistance. However, they show no basis for this bald factual assertion and there is

none in the record. In fact, most of the appellees appear to have been denied food stamps because a taxpayer has made an invalid dependency claim (see note 3, *supra*). In light of the civil and criminal penalties to which such a taxpayer is subject (see, *e.g.*, 26 U.S.C. 6651, 6653, 7201 and 7206(1)), Congress could properly assume that false dependency claims would be comparatively unusual; our income tax system relies primarily on honest self-reporting by taxpayers, and it would not have been unreasonable for Congress to assume that the great majority of taxpayers would be honest in claiming dependency exemptions.[8]

Where a taxpayer in a non-poor household has validly claimed a dependency exemption with respect to a child living elsewhere, the child and his household are in fact receiving substantial outside assistance; only in the unusual situations where invalid

[8] The statute is in fact ambiguous with respect to whether an invalid dependency claim renders the alleged dependent's household ineligible for food stamp assistance. The court below interpreted the statute as excluding households with respect to which invalid dependency claims had been made, and the court's holding that the statutory classification is arbitrary apparently rests heavily on this interpretation (see J.S. App. A, 10). We believe that the court's reading of the statute is correct; that interpretation has been the administrative construction as well. However, the contrary interpretation—that only valid dependency claims result in the exclusion of households from eligibility—does not do violence to the statutory language. Thus this Court should construe the statute as relating only to valid claims if that construction is necessary to preserve the statute's constitutionality. Cf. *Kent* v. *Dulles*, 357 U.S. 116. And as we note above (note 3, *supra*), such a construction would appear to deprive all appellees of standing in this case.

dependency claims have been made is the alleged dependent's household likely to be needy.[7] The fact that the statutory classification may in some few cases result in the denial of food stamp assistance to needy households does not, however, make the statute unconstitutional. A classification "does not offend the Constitution simply because [it] 'is not made with mathematical nicety or because in practice it results in some inequality.'" *Dandridge* v. *Williams, supra,* 397 U.S. at 485. And see our brief in *Moreno* (at 17–18).

In summary, Congress may legitimately consider the probability of alternative sources of financial assistance in setting criteria for the allocation of public welfare benefits, and Congress has acted reasonably in determining that a non-poor parent's claim of a dependency exemption for his adult child reflects actual assistance in an amount which would warrant the child's disqualification from a welfare program which is only intended for the most needy.

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[7] There may additionally be some instances where the one year carry-over provision of the statute results in the exclusion of actually needy households from eligibility. The court below relied in part on this possibility in finding the statute arbitrary (J.S. App. A, 10). However, the carry-over is the only practical means by which the basic statutory exclusion can be enforced: income tax returns are only filed annually, with respect to a taxable year already terminated. Furthermore, a claim of dependency cannot be definitely established until the end of the year during which support is furnished. In these circumstances, disqualification during the period following the taxable year is necessary in order that the underlying legislative purpose be carried out. And in providing such a carry-over, Congress could reasonably presume the continuation of an existing pattern of parental support.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be reversed.

Respectfully submitted.

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